

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 865 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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STATE OF GUJARAT

Versus

CHANDRAKANT GOPALJI SONI

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Appearance:

MR SA PANDYA, APP for appellant

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/03/99

ORAL JUDGEMENT

State has preferred this appeal against the order of acquittal recorded by the learned Judicial Magistrate First Class, Lalpur in Criminal Case No.184 of 1995 on 13-4-1998. The respondent-accused was charged and tried for the offences punishable under Secs.279, 337 and 338 of Indian Penal Code.

2. The prosecution case in short is that the original complainant was serving as a Cleaner in a truck

wherein present respondent-original accused was serving as a Driver. On the day of incident, when the driver of the truck was taking the truck in the reverse direction, complainant-victim has tried to get down from the left side cabin of the truck, as a result of which, his leg came under the left side wheel of the truck and he sustained fracture injuries and immediately he was taken to the hospital by his brother and others where he lodged the FIR. After recording the complaint, Police started investigation and filed the charge-sheet against the present respondent-original accused. Accused pleaded not guilty to the charge and at the end of trial, after hearing the arguments of both the parties, Court below has acquitted the accused. Therefore, the present appeal is preferred by the State.

3. At the initial stage, record and proceedings were called for. Today I have heard learned Addl. Public Prosecutor, Mr.S.A.Pandya for the State and also perused the record and proceedings. There are two important witnesses, namely injured-Hanifmiya Jusabmiya and brother of Hanifmiya Jusabmiya, Basirmiya Jusabmiya, who have been examined by the prosecution at exh.13 (P.W.1) and exh.18(P.W.4) respectively.

4. This Court has carefully gone through the evidence which was suggested to be read by the learned Addl. Public Prosecutor. It is established from the record and proceedings more particularly the evidences of victim and his brother and FIR that there are material contradictions on material points. As per the say of the victim-Hanifmiya Jusabmiya, the accident has taken place while he was getting down from the left side cabin of the truck when the driver was taking the truck on reverse portion. Whereas in the FIR, it is stated that at the time of accident, he was not in the truck but he was on the left side of the truck and he met with the accident when he was guiding the truck driver. So, on material points, there are material contradictions which come in the way of prosecution. Over and above, facts remain that incident has taken place on the backside of the front wheel when truck was taking reverse motion. If it is so, then the say of the victim is not prima-facie believable. Brother of the victim has categorically deposed in his deposition that Hanifmiya Jusabmiya, after completing his work, was coming from the Court side and he was going towards the water tank and at that time, accident has taken place near the water tank. This is another contradiction which comes in the way of prosecution. It is to be noted that except two witnesses, no other eye witnesses were examined by the prosecution and the oral evidence led by the prosecution

is not satisfactory to prove the guilt of the accused more particularly when the evidences are such which create doubt in the mind of the Court. It is a clear case wherein benefit of doubt should be given to the accused. Therefore, I do not find it necessary to interfere with the order passed by the learned Judicial Magistrate First Class, Lalpur.

5. I am not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

6. It is under the above circumstances that appeal is required to be dismissed and is accordingly dismissed.

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